

1 and even setting aside Alcon's general approval rights discussed above for
2 controversial affiliations, Tesla plainly needed livestreaming and worldwide rights
3 for the requested use. Warner Bros. Pictures "clip licensing" rights on BR2049 do
4 not include livestream or worldwide uses.

5 62. Nonetheless, for some unknown period of time, WBDI and Warner
6 Bros. Pictures led Musk and Tesla down a road of expecting to get the Exhibit A
7 image rights for Musk's keynote speech, and without involving Alcon, by WBDI
8 causing Warner Bros. Pictures to work with Tesla to grant Tesla a "clip license" for
9 the use.¹¹

10 63. Plaintiff makes the allegations of this paragraph 63 on information and
11 belief, subject to need for discovery: As part of the "clip licensing" plan, WBDI (or
12 Warner Bros. Pictures shared services personnel acting for WBDI), intended to
13 charge Tesla a specific amount of money for the "clip license." This was money
14 that neither WBDI nor any WBDI entity would have received by an Alcon
15 licensing arrangement with Tesla for an automobile brand affiliation, had Alcon
16 granted one.¹² The amount of money that WBDI was going to charge Tesla for an

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18 ¹¹ This allegation that WBDI in fact pursued an (improper and ill-advised) "clip
19 license" plan in this way is not speculation by Alcon. Heath told Alcon's legal
20 department that WBDI spent some unknown amount of time pursuing such a "clip
21 license" plan prior to finally contacting Alcon. Heath communicated this to Alcon
22 in telephone calls with Alcon's legal department on October 10, 2024 and October
23 16, 2024, or in one of the those calls. The telephonic information from Heath in that
24 regard is further supported by partial email chains visible to Alcon. On the day of
25 the Event, as described further below, Heath copied Alcon's legal department into
26 pre-existing email chains showing WBDI-Warner Bros. Pictures shared services
27 personnel (Heath) trying to clear the Exhibit A usage for Tesla without contacting
28 Alcon, and by characterizing the usage (improperly) as only involving "clip
licensing" rights.

¹² Brand affiliation licensing money usually goes to the production company (Alcon
here), and not to the distributor (Warner Bros. Pictures). In contrast, "clip license"
(footnote continued)

1 Exhibit A image “clip license” is unknown to Alcon, but likely was on the order of
2 one percent (1%) or less of what Alcon would have charged Tesla for a brand
3 affiliation license, if Alcon had been willing to grant one at all.¹³

4 64. Plaintiff makes the allegations of this paragraph 64 on information and
5 belief, subject to need for discovery: As part of the “clip license” plan, prior to the
6 day of the Event, and prior to any communication with Alcon, WBDI or its
7 representatives transmitted a high resolution digital file of the Exhibit A image to
8 Tesla, for the purpose of Tesla using it in the Event keynote speech, possibly along
9 with other high resolution files of other BR2049 material (such as other still images
10 from BR2049).¹⁴

11 65. Possession of a quality high resolution digital image file was
12 important for what Musk and Tesla wanted to do. It is not hard to find and make
13 unauthorized copies of the Exhibit A image online in relatively low or moderate
14 resolution. However, without a quality high resolution digital image file, the
15 resolution of an unauthorized image captured online could easily be too low for the
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18 money paid to the distributor goes into the accounting “waterfall” paid out by the
19 distributor to the production company, with the distributor taking out a percentage
20 distribution fee, essentially, on the “clip license” amount received.

21 ¹³ Plaintiff pleads this based on general knowledge of amounts usually associated
22 with true clip licenses, and making the assumption that consistent with
23 characterizing the usage as a clip license, Warner Bros. Pictures set the fee
24 accordingly. Clip licenses have such fees in the ordinary course (they are not
25 typically granted for free).

26 ¹⁴ Plaintiff bases the allegations of paragraph 64 above in part on email
27 communications from Heath to SPE made on October 10, 2024, which Heath later
28 copied to Alcon. In those October 10, 2024 emails between WBDI and SPE, WBDI
(Heath) tells SPE in essence, *inter alia*, that SPE does not need to provide Tesla
with a high resolution digital file of the Exhibit A image, because “[t]hey [Tesla]
already have the image (it is an approved still).” From this, Alcon reasonably infers
that Tesla already had it, specifically because WBDI transmitted it to Tesla.

1 high resolution presentation of the image that Musk and Tesla wanted for the
2 Event, including the very large screen size that was actually displayed by all
3 Defendants to the individuals attending the Event in person.

4 66. WBDI's choice to spend time on the "clip license" plan rather than
5 immediately informing Alcon of Musk and Tesla's specific expression of interest
6 in using protected elements of BR2049 for the Event, especially combined with
7 WBDI's overall (independently valid but risky) decision to exclude Alcon from
8 Event planning and preparations virtually entirely, caused Alcon reasonably
9 foreseeable prejudice by itself.

10 67. Specifically, WBDI's failure to contact Alcon sooner deprived Alcon
11 of the ability to take its own actions to protect itself in a meaningful time frame
12 before Musk and Tesla's planned use of BR2049 elements in the Event. Actions
13 which Alcon was deprived of taking in any meaningful way included Alcon
14 engaging with Tesla directly about the issue, including so that Alcon could ensure
15 that the BR2049 rights situation as between Alcon and Warner Bros. Pictures was
16 conveyed accurately to Musk and Tesla, and could possibly even have included
17 Alcon seeking an injunction against use of any BR2049 elements or other
18 exclusively owned Alcon property by Musk and Tesla in the Event.

19 68. WBDI further exacerbated the situation, and further foreseeably
20 prejudiced Alcon, by its next choices.

21 ***Consumer Expectations Build for Musk and Tesla to Use BR2049 to Set the***
22 ***Theme of the Event Despite Alcon Still Being Excluded from the Process***

23 69. At some unknown point in time after the Event had been announced to
24 the public, but before the Event itself, and while WBDI was apparently still holding
25 out the "clip license" plan to Tesla, members of the public came to have a specific
26 expectation that Musk was going to use BR2049 to set the theme of the Event. For
27 instance, Exhibit J shows an X post and link to a video by a YouTube journalist
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1 documenting his October 9, 2024 interview of several men planning to attend the
2 Event the next day, as they all sit together at a restaurant following a meal. The
3 journalist asks each of the men what they expect from the Event the next day
4 (October 10, 2024). The journalist's question/answer exchange with one of the
5 men is:

6 Q. [What are you expecting?]

7 A. Tomorrow, I'm expecting, so Blade Runner 2049 –
2049? Is that how you –

8 Other Man Sitting Next to Answering Man: Yes.

9 Q. Is that a movie?

10 A. It is a movie and it's from Warner Brothers. Warner
Brothers, we are going to Warner Brothers Studio, so I'm
11 expecting, like Warner Brothers, like, backdrop and theme
of Blade Runner [*sic*] with a cy... with a Robotaxi, which is
12 inspired by the Blade Runner [*sic*] vehicle to show up, so
13 we're going to get that theme of the future.

14 Exhibit J, <https://www.youtube.com/watch?v=KyBFIYFIXcg>.

15 70. Plaintiff makes the allegations of this paragraph 70 on information and
16 belief, subject to the need for discovery: Musk knows his audience very well, and
17 is attuned to them. He was aware, and possibly even helped generate, the buzz
18 building as the day of the Event neared that Musk was specifically going to use
19 BR2049 to set the Event's theme. Musk wants to give his audience what they want
20 and expect in a product reveal. The fact that WBDI was leading Musk and Tesla
21 down a road of believing that the Exhibit A usage had been licensed by Warner
22 Bros. Pictures, or would be, exacerbated and inflamed Musk's desire and
23 determination to use BR2049 elements to set the theme of the Event. It contributed
24 to Musk's and Tesla's ultimate decision not to take an alternative course than the
25 one they in fact chose after the "clip license" plan ultimately collapsed.

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WBDI Reverses Itself and Tells Musk and Tesla That the “Clip License” Plan Will Not Work Because Tesla Needs International Rights Definitely Not Held by Any WBDI Entity

71. At some point near the day of the Event (maybe the morning of, or maybe a few days prior), WBDI abruptly changed course on Musk and Tesla about the Exhibit A image. In the “Tesla-shops-in-the-WBDI-content-store-to-prepare-for-the-Event” analogy terms, WBDI content store security stopped Tesla from leaving the content store with the BR2049 Exhibit A image use license in Tesla’s shopping cart, so that WBDI store security could check Tesla’s cart, as it were.

72. Specifically, WBDI’s shared services licensing department told Tesla that Warner Bros. Pictures was now -- very close to the scheduled start of the Event -- not going to be able to license the Exhibit A image to Tesla for Musk’s keynote speech as planned. The reason WBDI gave for the reversal was that WBDI had only just realized that Tesla was going to need international rights, and that Warner Bros. Pictures did not have sufficient BR2049 international rights by itself to grant an Exhibit A image license to Tesla for the required worldwide use.¹⁵ (WBDI apparently communicated this without telling Tesla about the other shortcomings discussed above as to Warner Bros. Pictures’ BR2049 rights.)

73. Things might have simply ended there, but they did not. On the morning of the Event, an unidentified person in senior management at WBDI (*i.e.*, an individual in WBDI’s senior management whose identity is not yet known to Alcon) made a direct or indirect communication to the individual WBDI shared services licensing executive (Heath) who had made the determination that the “clip license” plan was not legally viable. The essence of the message from this

¹⁵ Heath disclosed this in essence to Alcon’s legal department in telephone calls with Alcon’s legal department on October 10, 2024 and October 16, 2024, or in one of those calls.

1 unidentified WBDI senior management person to Heath was a direction to Heath
2 that she should help Tesla fix the Exhibit A image licensing problem so that Musk
3 could use Exhibit A in his keynote speech as planned.¹⁶

4 74. Not long after this communication from WBDI senior management to
5 Heath, and shortly after noon on the day of the Event, Heath provided what she
6 believed to be the relevant SPE licensing department contact information to Tesla,
7 and Heath and Tesla proceeded to each separately make coordinated contact with
8 Alcon's international distribution partner, non-party SPE. The purpose of both of
9 the separate but coordinated contacts by Heath and Tesla to SPE was to try to get
10 international "clip license" rights for Tesla to the Exhibit A image, and without
11 telling Alcon.

12 75. First, Heath provided her SPE clip licensing counterpart's direct email
13 address to Tesla representatives so that Tesla could make direct contact with SPE.
14 Second, at 12:11p.m. PDT on October 10, 2024 (about seven hours before the
15 scheduled 7:00 p.m. PDT start of the Event) Heath sent an email "heads up" to the
16 SPE executive that the SPE Executive might be getting an emergency rush basis
17 BR2049 rights permission request for "a Tesla even[t] happening today on our lot
18 (sorry)."

19 76. In the same email to the SPE executive, Heath explained that the
20 "emergency" was the result of her shared services department initially but
21 erroneously treating the contemplated Tesla Exhibit A usage as only for an in-
22 person event, with no livestream, but that Heath's department was then told the
23 usage would involve worldwide livestream. Heath's email further explained that

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26 ¹⁶ Heath told Alcon that the described communication and direction from WBDI
27 senior management to Heath in fact occurred. Heath disclosed the essence of this to
28 Alcon in calls with Alcon's legal department on in calls with Alcon's legal
department on October 10, 2024 and October 16, 2024 or one of those calls.

1 the reason for the contact to the SPE executive was a WBDI belief that SPE
2 “controlled international,” and thus implicitly that a combination of “clip license”
3 permissions from Warner Bros. Pictures and SPE could provide adequate rights
4 without involving Alcon.

5 77. SPE promptly responded to WBDI in writing (in an email sent at
6 12:49 p.m. PDT on October 10, 2024) that the BR2049 international usage rights
7 which Tesla desired were beyond the scope of anything that SPE could grant
8 without Alcon’s permission; that Alcon would have to be involved for Tesla to be
9 granted such rights; and that SPE had already told Tesla by phone that SPE did not
10 have sufficient rights to grant the international rights being requested without
11 Alcon involvement.

12 78. Tesla appears to have flatly refused to contact Alcon. For example, in
13 the same 12:49 p.m. PDT email referenced above, SPE’s representative also wrote
14 to WBDI (Heath): “I just spoke to [Tesla representative] David Adametz and he
15 said, they need worldwide rights but is not working with Alcon.” Alcon submits
16 that the facts and circumstances, including Musk’s and Tesla’s known aversion to
17 working with or validating the business model of brand affiliation licensors, and
18 the known facts of how everything actually happened with respect to the Event,
19 including that Tesla never itself contacted Alcon even a single time, all support that
20 the meaning of the reported statement by Tesla’s Adametz to SPE after learning
21 that Alcon’s permission was required for the international rights requested, was not
22 “Tesla is not working with Alcon so far (or yet),” but rather “Tesla is not willing to
23 work with Alcon at all.”

24 ***WBDI Contacts Alcon About Six Hours Before The Scheduled Start of the***
25 ***Event, Seeking an Emergency Exhibit A Use License for Tesla***

26 79. At 12:54 p.m. PDT on October 10, 2024, Heath contacted Alcon, by
27 copying Alcon’s legal department into the existing chain with SPE, but still trying
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1 to characterize the usage requested as only involving a “clip license.” This was the
2 first contact by anyone at WBDI to anyone at Alcon about the Event: Alcon knew
3 nothing about the Event until this point.

4 ***Alcon Informs WBDI and SPE That License Permission is Denied With***
5 ***Additional Directions and Objections and WBDI Balks At Communicating Any***
6 ***of the Message to Tesla, Wanting Only SPE to Do So***

7 80. After requesting more information than WBDI’s Heath provided in
8 her initial emergency request to Alcon, and receiving some from Heath, and after
9 considering the situation at Alcon’s CEO level, Alcon’s representative
10 communicated back in writing to WBDI (Heath) and SPE as follows, at 1:20 p.m.
11 PDT on October 10, 2024: “I checked with one of Alcon’s co-heads, and he does
12 NOT approve of any use of ‘Blade Runner 2049’ in connection with Tesla and/or
13 X. Please confirm that you have received this email and will not be proceeding
14 with the use of our property at this event. Thanks.” (Emphasis in original.)

15 81. WBDI and SPE both communicated that this was received. However,
16 WBDI (Heath) balked at being the channel to communicate any of it back to Tesla.
17 Instead, in an email copying Alcon, Heath asked SPE to do so, apparently so that
18 WBDI would not have to itself give Musk and Tesla any bad news.

19 ***SPE Communicates the International Rights Licensing Permission Denial to***
20 ***Tesla, But Without Communicating the Full Scope of Alcon’s Requested***
21 ***Message to Musk and Tesla***

22 82. In response to Heath’s request that SPE do the communicating of the
23 bad news, rather than WBDI doing it, SPE reported back to WBDI and Alcon by
24 email at 1:27 p.m. PDT on October 10, 2024 that SPE had communicated back to
25 Tesla that “[SPE] [c]onfirmed use was not granted and thanked them for their
26 interest.”

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1 83. This reported communication by SPE to Tesla by itself was
2 significantly less than what Alcon asked to be communicated to Musk and Tesla,
3 and, if left to stand by itself, was problematic. If what SPE reported as having been
4 communicated to Tesla were all that were communicated back to Tesla (*i.e.*, if
5 more were not said to Tesla, especially by WBDI), it would be potentially
6 misleading to Musk and Tesla in at least two respects, both of which increased
7 Alcon's reasonably foreseeable prejudice.

8 84. First, by conveying only that the specific Exhibit A usage request at
9 issue was denied by Alcon, and also conveying a "thank you for your interest," the
10 SPE communication, if left to stand by itself, carried risk of Musk and Tesla not
11 understanding the strength and scope of Alcon's position: that Musk and Tesla not
12 make any use of BR2049 or any other Alcon property for the Event.

13 85. Second, if the SPE communication were left to stand by itself with no
14 further communications by WBDI to Tesla afterward, the combination of
15 communications by WBDI and SPE to Tesla up to that point potentially created
16 another serious problem: it was susceptible to an inference by Musk and Tesla that
17 the only problem, which WBDI as an organization needed Alcon's or SPE's help to
18 cure, was lack of sufficient international BR2049 rights.

19 86. Alcon's legal department saw at least some of these potential
20 problems and moved quickly to try to correct them, by trying to make sure that
21 SPE's incomplete communication to Tesla did not stand unsupplemented by more
22 direct and complete information directly from WBDI to Tesla.

23 87. The Event was not SPE's to say anything about. The larger message
24 was thus not really for SPE to communicate to Tesla, and Alcon did not necessarily
25 expect SPE to communicate it to Tesla. Rather, Alcon reasonably expected WBDI
26 to do so. Alcon's legal department did nonetheless make a telephone call to SPE to
27 note the insufficiency of SPE's communication. However, more relevant here,
28

1 when Alcon saw Heath balk at WBDI itself actually telling Musk and Tesla any
2 bad news, and saw that SPE had not communicated the full message that needed to
3 be communicated, Alcon's representative sent WBDI (Heath) an email requesting a
4 phone call as soon as possible. Such a call in fact then occurred.

5 ***Alcon's Event Directions to WBDI***

6 88. In the resulting phone call between Alcon's legal department and
7 WBDI's Heath, which took place at around 1:45 p.m. PDT on October 10, 2024
8 Alcon clearly communicated to Heath all of the following: a) Alcon refused all
9 permissions; b) Alcon was adamantly opposed to Alcon or any Alcon-owned
10 property ever being used by Tesla, Musk, or any Musk-owned company for
11 anything, including because Alcon did not like Musk and was concerned about his
12 increasing political polarity and high brand toxicity; c) Alcon asked and directed
13 WBDI to communicate all of this directly to Musk and Tesla (and specifically not
14 for WBDI to rely only on SPE's Exhibit A international rights denial
15 communication to Tesla); and d) Alcon requested and directed that WBDI also
16 actively police against any Musk and Tesla use of BR2049 or any Alcon property
17 in the Event. ("**Alcon Event Directions to WBDI**".)

18 89. Alcon understood WBDI's (Heath's) response to mean that WBDI
19 would honor and execute on all of Alcon's Event Directions to WBDI.

20 ***WBDI Apparently Intentionally Ignores***

21 ***All of the Alcon Event Directions to WBDI***

22 90. What WBDI did or did not do next is still not entirely clear to Alcon.
23 Alcon initially believed that WBDI had followed all of the Alcon Event Directions
24 to WBDI, except that WBDI did not actively police Musk and Tesla against use of
25 BR2049 elements or other Alcon exclusively owned property during the Event.

26 91. However, it now unfortunately appears more likely that WBDI did not
27 perform any of Alcon's Event Directions to WBDI. Instead, it now appears that
28

1 WBDI decided to rely only on SPE's communication to Tesla that international
2 rights to use Exhibit A had been denied, so that WBDI would not itself have to give
3 Musk or Tesla any bad news – a course of action that Alcon had precisely asked
4 WBDI not to do.

5 92. Thus, as Plaintiff's lead alternative theory on the question of what
6 WBDI did or did not do in response to the Alcon Event Directions to WBDI,
7 Plaintiff's pleads on information and belief, subject to discovery, that the answer is
8 "nothing": although WBDI had caused Alcon reasonably to infer that WBDI would
9 perform all of Alcon's Event Directions to WBDI, WBDI instead made an
10 intentional or negligent choice to perform none of Alcon's Event Directions to
11 WBDI. (**"WBDI Action on Alcon Event Directions to WBDI Alternative
12 Theory 1."**)

13 93. If that is what happened, then among other problems, it potentially left
14 uncorrected a misimpression that WBDI had instilled in Musk and Tesla that was
15 unreasonably and foreseeably prejudicial to Alcon. First, WBDI at least initially
16 gave Musk and Tesla the false impression that Warner Bros. Pictures had sufficient
17 BR2049 rights to grant Tesla an Exhibit A image use license for Musk's keynote
18 speech without any Alcon knowledge or approval. Later and second, WBDI made
19 an only partial correction to the initial inaccurate representation on the BR2049
20 rights situation, to the effect that, while there was a deficiency in Warner Bros.
21 BR2049 rights preventing Warner Bros. Pictures from granting Tesla a valid
22 license, the only deficiency was a lack of sufficient international rights.

23 94. A corollary (but false) understanding that this potentially created in
24 Musk and Tesla was that Alcon's exclusive rights in BR2049's protected elements
25 were only for the non-domestic territory. Under WBDI Response to Alcon Event
26 Directions to WBDI Alternative Theory 1, WBDI never corrected this false
27 impression potentially instilled in Musk and Tesla about the scope of Alcon's
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BR2049 rights. Musk and Tesla were thus left by WBDI with the (inaccurate) impression that Alcon did not have the exclusive or blocking rights to BR2049 uses in the domestic territory, including the U.S. The false impression left by WBDI in Musk and Tesla was instead that Alcon had no U.S. rights in BR2049 and instead Warner Bros. Pictures had them all (or enough); that Warner Bros. Pictures was willing to grant such rights to Tesla; and perhaps even already had purportedly granted such domestic territory rights to Tesla for use of Exhibit A.

95. This would significantly (but erroneously) change risk assessments for Musk and Tesla: while they might be exposing themselves to Alcon claims under the law of other jurisdictions if they used BR2049 protected elements in Musk's keynote speech without Alcon's permission, they potentially believed that they were effectively immune from U.S. law-based infringement claims by Alcon. This would have sharply prejudiced Alcon by erasing the deterrent effect on Musk and Tesla of Alcon's exclusive United States copyright rights in BR2049. As part of WBDI Action on Alcon Event Directions to WBDI Alternative Theory 1, Alcon alleges all of this did happen as a consequence of WBDI's intentional (or negligent) decision not to perform any of Alcon's Event Directions to WBDI.

96. ***WBDI Action on Alcon Event Directions to WBDI Alternative Theory 2:*** *WBDI performed all of the Alcon Event Directions to WBDI, except that WBDI intentionally or negligently failed actively to police Musk and Tesla's conduct during the Event. Under this theory, before the Event started, Musk and Tesla had accurate information about Alcon's positions, which information was relayed to Musk and Tesla by or through WBDI, and Musk and Tesla were on clear notice that they would potentially face U.S. law-based claims by Alcon if they chose to use protected elements of BR2049 in the Event.*

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***WBDI Fails Actively to Police Musk and Tesla's Conduct During the Event
Against Uses of BR2049 Protected Elements or Any Other Alcon Exclusively
Owned Property, Contrary to Alcon's Event Directions to WBDI***

97. Under both of the above alternative theories, WBDI Action on Alcon Directions to WBDI Alternative Theories 1 and 2, WBDI either intentionally or negligently failed to actively police Musk's and Tesla's conduct during the actual Event against Musk and Tesla uses of protected elements of BR2049 or any other property exclusively owned by Alcon. This failure by WBDI was contrary to what Alcon had requested in the Alcon Event Directions to WBDI, and to what Alcon had reasonably understood WBDI had committed to Alcon to do after WBDI's receipt of the Alcon Event Directions to WBDI.

98. There appears to be no dispute by Defendants that WBDI in fact did not actively police Musk and Tesla's Event conduct against Musk and Tesla uses of BR2049 or any other property exclusively owned by Alcon.

99. Infringement followed.

Musk and Tesla Use an AI Image Generator to Create The Exhibit C Image

100. Several hours later, the Event happened. Musk featured the image attached as Exhibit C, also shown below, prominently in his keynote speech:



101. Musk and Tesla (and/or their agents) created Exhibit C using an artificial-intelligence (“AI”)-driven image generator, after communication to Tesla by at least SPE of the Exhibit A licensing denial. Alcon alleges on information and belief, subject to need for discovery, that the AI image creation process involved literal copying of protected elements of BR2049, possibly including literal copying of the Exhibit A image or of the entire BR2049 work. Plaintiff does not know exactly what Musk and Tesla did in their admitted use of an AI image generator to create Exhibit C, and pleads two alternative theories.

- a. **Exhibit C AI Generation Process Alternative Theory 1:** From Alcon’s examination, Exhibit C seems likely to have been generated by Musk and/or Tesla (or someone acting under their control and/or at their direction): a) copying the Exhibit A image and the Exhibit B images (or similar images from BR2049’s Las Vegas sequence), or even possibly the full BR2049 motion picture work (or qualitatively significant portions thereof) in audiovisual form, into an AI image generator, and b) then asking an AI image generation engine to make “an image from the K surveying ruined Las Vegas sequence of ‘Blade Runner 2049,’” or some closely equivalent input direction. Alcon alleges that in fact this, or something closely akin to it, is how the Exhibit C image was generated, and for the bad faith intentional purpose of affiliating BR2049 and its goodwill with Tesla’s cybercab, over Alcon’s denial of permission and express objections.
- b. The Exhibit C image was generated in the above way by an employee or agent of Tesla (possibly by Adametz or Lili), or another Musk-owned or -controlled company, or even possibly by Musk himself. It was done with Musk and Tesla’s knowledge of the improper nature and purpose of the image generation request. It was done by

1 individuals subject to the supervision of and under the direction and
2 control of Musk. Musk and Tesla participated in its creation.

3 c. ***Exhibit C AI Generation Process Alternative Theory 2:*** *The same*
4 *facts as Exhibit C AI Generation Process Alternative Theory 1, except*
5 *that part of the image generation process included individuals*
6 *involved in the image generation process also selecting or otherwise*
7 *obtaining what Musk and Tesla claim is a “licensed image” as a*
8 *background and then directing an AI image generator to add “Elon*
9 *Musk in a duster in the foreground,” or “Elon Musk in a duster*
10 *looking into the city,” or similar direction. However, the AI image*
11 *generator in following the image generation prompts from Musk*
12 *and/or Tesla (or persons acting under their control and/or direction)*
13 *still relied on literal copies of BR2049 in its entirety, or of*
14 *qualitatively significant protected portions of BR2049, to generate the*
15 *image, and, the BR2049 elements in the image generator were placed*
16 *into the image generator by Musk and/or Tesla (or persons acting*
17 *under their control and/or direction).*

18 ***Musk Uses the Exhibit C Image in His Keynote Speech to Set the Event’s Theme***

19 102. The Event was scheduled to begin at 7:00 p.m. PDT on October 10,
20 2024, but did not actually begin until about 8:00 p.m. PDT. In a brief introduction
21 of a minute or less, a Tesla representative named “Franz” took the stage. Franz’s
22 only substantive remark was the following: “Just want to thank Warner Brothers
23 for hosting us here. As you know, this is the birthplace of many epic films – many
24 of them depicting a vision of the future.”

25 103. Franz then said: “We’re here tonight to experience that future, that is
26 closer than you think. And who better than Elon, right, to show us that future.”
27 The livestream then shifted to a combination of aerial shots and ground cameras
28

1 showing a cybercab (or Robotaxi – the terms appear to be interchangeable as far as
2 Plaintiff can tell) arriving at an on-lot theater, some distance away from the
3 presentation stage building. Musk emerged from the theater and entered the
4 cybercab after silently waving to a small crowd.

5 104. The livestream tracked the Musk-bearing cybercab from various
6 camera vantage points as it autonomously rolled him slowly to the presentation
7 stage building at another part of the lot. Musk exited the cybercab and walked onto
8 the Event stage. He spent about another minute on welcoming remarks and
9 explaining that there were 20 cybercabs and another 30 fully autonomous and
10 driverless Tesla Model Ys at the Event for attendees to take a ride in.

11 105. Then to commence the actual presentation, Musk said: “So you see a
12 lot of sci-fi movies where the future is dark and dismal, where it’s not a future you
13 want to be in.” As Musk said this, the Event’s global livestream feed changed to a
14 full screen display of a presentation slide with an image of the Earth from space at
15 sunrise, with the words “What Kind of World Do We Want to Live In?” This first
16 slide stayed on the full-screen livestream feed for less than two seconds.

17 106. Then, the livestream full screen display shifted to Musk’s second
18 slide, which the livestream displayed for about 11 seconds. The second slide is an
19 image that looks (on a first initial visual read) like a motion picture still photo
20 (although it isn’t) of a male figure seen from behind, with close-cropped hair,
21 wearing a trench coat or duster, standing in almost full silhouette as he surveys the
22 abandoned ruins of a city, all bathed in misty orange light. In the upper left corner,
23 the words “Not This” appear superimposed on part of the orange sky. A Tesla logo
24 appears in the lower right corner. Exhibit C is a screenshot of this second slide
25 image from Musk’s presentation.

26 107. Alcon submits that, for anyone familiar with BR2049, the Exhibit C
27 image objectively reads visually either as an actual still image from BR2049’s
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1 iconic sequence of K exploring the ruined Las Vegas, or as a minimally stylized
2 copy of or illustration of such a still image, or otherwise as an illustration of a
3 scene from BR2049 and specifically its Las Vegas Sequence.

4 108. If there were any doubt that Musk and Tesla intended to evoke
5 BR2049 with the Exhibit C image, Alcon submits that Musk effectively erased
6 such doubt with his voiceover comments during the approximately 11 seconds that
7 the infringing Exhibit C image was completely filling the livestream screen. Musk
8 said: “You know, I love ‘Blade Runner,’ but I don’t know if we want that future. I
9 believe we want that duster he’s wearing, but not the, uh, not the bleak
10 apocalypse.” Alcon submits that this effectively identified the Exhibit C image as
11 an illustration of BR2049, its main character K, and BR2049’s iconic Las Vegas
12 Sequence. The Exhibit C image then disappeared from the screen and Musk
13 segued to talking about how what we all should want is a happier looking future,
14 and how happy and joyful Musk’s vision of cities and highways filled with
15 driverless robot cars will be and why.

16 109. Musk’s Event-opening remarks effectively identified Exhibit C to the
17 audience as an image of or from BR2049 and its main character K. Musk used
18 Exhibit C and his remarks about it to set the theme of the Event. The essence of
19 the Event was a commercial call to action to invest in Tesla and to buy Tesla cars
20 and robots. Musk’s presentation occurred to a large live audience on WBDI’s lot,
21 using WBDI’s infrastructure and resources. A video feed of it also was displayed
22 over WBDI’s systems, and livestreamed worldwide to millions of viewers.

23 110. The Event’s worldwide livestream X feed, including Musk’s BR2049-
24 infused opening, was re-posted by Tesla, Musk, X and others thousands of times,
25 with millions of total views. The false affiliation between BR2049 and Alcon, on
26 the one hand, and Tesla and Musk, on the other hand, is irreparably entangled in
27 the global media tapestry, as all Defendants knew would inevitably happen.

111. Exhibit C and the portion of the recorded Event feed containing it (Exhibit 2 to February 4, 2025 Declaration of Christopher Marchese in Support of Defendants’ Motions to Dismiss Original Complaint [Dkt. 24-2] [“Event Recording”]) are substantially similar to copyright-protected elements of BR2049, and infringe Alcon’s exclusive copyright rights in BR2049. *See* Exhibit D (copyright side-by-side comparison). A side-by-side comparison of Exhibit C against Exhibit A and Exhibit B images from BR2049 is also shown below:



112. Musk and Tesla’s conduct also created at least likelihood of confusion about whether there is any licensing association between Alcon, on the one hand,

and Musk or Tesla, on the other hand (there is not and never has been). *See* E
(sample Alcon BR2049 trade dress images); and F (side-by-side Exhibit C and
Alcon trade dress comparison). A side-by-side comparison of Exhibit C against
Alcon trade dress images from Exhibit E is also shown below:



Musk's and Tesla's Infringing Conduct Was Intentional

113. Plaintiff is informed and believes, and subject to need for discovery, alleges that, although Musk said the words “Blade Runner” without the year number (without “2049”), he subjectively meant to evoke BR2049 rather than the original 1982 Picture, and he was motivated to do so. The two films are related, but BR2049 has its own distinct brand and secondary meaning, and BR2049’s specific goodwill is more relevant to Tesla’s and Musk’s Robotaxi product.

114. Although the 1982 Picture does prominently feature flying car “spinners,” the cars in the 1982 Picture are not shown to be wholly or even partially autonomous, or even shown to employ artificial intelligence themselves in any way. None of the cars in the 1982 Picture play any role as a quasi-sentient companion to the Deckard lead character in the 1982 Picture, like K’s spinner does for K in BR2049. Pointedly, then, if you are a company (or own one) specifically trying to market artificially intelligent, wholly or partially autonomous self-driving cars (as Tesla and Musk are), the 1982 Picture has little or no specifically relevant context. In contrast, BR2049 has extremely relevant context and worldwide goodwill in precisely the areas of artificial intelligence, self-driving capability, and autonomous automotive capability that Tesla and Musk are trying to market.

115. Musk did successfully evoke BR2049 specifically, including to consumers and potential car maker and car brand customers of Alcon, and that is true even though Musk only said the words “Blade Runner” without adding the year “2049.” For the reasons detailed in the next paragraphs below, Musk’s act of displaying the Exhibit C Image -- an image of a man in near-silhouette, with close-cropped hair and wearing a duster, while he surveys an orange-light-bathed ruined and abandoned cityscape -- and displaying it for 11 seconds while Musk talks

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1 about “Blade Runner” and a specifically “apocalyptic” future – that is all
2 specifically evocative of BR2049, and not of the 1982 Picture.

3 116. While both the 1982 Picture and BR2049 show dystopian urban
4 futures, only BR2049 has a specifically apocalyptic setting. Only BR2049 has an
5 abandoned and ruined city (Las Vegas) that has suffered an event of extreme
6 destruction (the detonation by terrorists of a dirty nuclear device). The ruined Las
7 Vegas is where the most dramatically charged events of the BR2049 story take
8 place (K’s encounter with the long-lost Deckard). The setting has striking color
9 design, cinematography and other visual elements: it is distinctly bathed in
10 “apocalyptic” misty orange light, just like the Exhibit C Image and which the 1982
11 Picture does not have in any comparable scene involving any kind of ruined city
12 or post-apocalyptic setting. Throughout BR2049, there also are general references
13 and story elements about civilization having semi-recently suffered a broader,
14 apocalyptic nuclear conflict in the mid-range past, including electromagnetic pulse
15 activity that destroyed many electronic records, making investigation of the past
16 difficult.

17 117. In contrast, the 1982 Picture is set in a dystopian urban landscape of a
18 then-futuristic 2019 Los Angeles, but the 1982 Picture’s setting is specifically not
19 apocalyptic. In the 1982 Picture, there has not been any dirty nuclear device, or
20 nuclear electromagnetic burst which destroyed electronic records, or other
21 apocalypse that has hit Los Angeles or Las Vegas or any other location.

22 118. If anything, the urban setting of the 1982 Picture is the opposite of
23 abandoned and ruined: it is overrun with too much ongoing industry and suffering
24 from overpopulation. It is not a stark, lonely, misty, orange, dry, radiated desert
25 ruin like BR2049’s Las Vegas or the Exhibit C Image, but rather is an
26 overcrowded neon urban prison, where the citizens are trapped in constant night
27 plagued by perpetual rain and an ever-present bombardment of consumer
28

1 advertising. In the 1982 Picture, neither the main character nor anyone else ever
2 goes to any orange-colored post-apocalyptic ruined city or any other such location,
3 in a duster or otherwise. Further, while in BR2049, Deckard is (or was) a “blade
4 runner” who appears in BR2049’s Las Vegas Sequence setting, he never wears a
5 duster in BR2049 at all: Musk’s voiceover reference to a blade runner wearing a
6 duster in a post-apocalyptic setting while directing the audience to the Exhibit C
7 image, can only be a reference to K (not Deckard).

8 119. Plaintiff thus alleges on information and belief, subject to need for
9 discovery, that Musk thus very clearly meant specifically to evoke to the audience
10 including actual and potential purchasers and the consuming public, not the 1982
11 Picture, but rather BR2049 and everything that goes with it -- including artificially
12 intelligent autonomous cars like the Tesla cybercab being pitched at the event. He
13 successfully did.

14 120. Plaintiff submits that any argument that Musk and Tesla only meant to
15 talk broadly about the general idea of science fiction films and undesirable
16 apocalyptic futures and juxtaposing them with Musk’s ostensibly happier robot car
17 future vision, and that they just used BR2049 by chance, without conscious
18 awareness of and intent to appropriate BR2049’s special secondary meaning in the
19 context of trying to sell artificially autonomous cars, is not credible.

20 121. The art of advertising is at least partially about choosing expressive
21 levers that will quickly and effectively move the audience emotionally,
22 psychologically, and/or intellectually into a state where the seller can more easily
23 influence them to do the thing or things the seller wants them to do. Here,
24 especially when the entire context of the Event is considered, Plaintiff is informed
25 and believes and, subject to the need for discovery alleges, that part of Musk’s and
26 Tesla’s goal was to try to convince the audience at the outset of the presentation
27 that the decision that the presentation was going to put to them (whether or not to
28

1 buy or bet on Musk's and Tesla's artificially intelligent car products) was urgent
2 and critical to the future of joint human/AI civilization. Musk also wanted to
3 instill a mood not only of curiosity, but also of fear, anxiety and urgency. Plaintiff
4 pleads on the same basis that Musk also wanted strongly to suggest that there are
5 right and wrong answers to the question, leading to good futures and bad futures
6 (and that doing what Musk wants leads to the good futures).

7 122. What Musk did was use the lever of BR2049's protectable elements as
8 Musk's specific vehicle of expression to communicate those themes and moods, to
9 move his audience into the emotional space Musk wanted the audience to be in for
10 the presentation. Whether or not Musk intended that, it was the objective effect.
11 That infringed Alcon's copyright in the BR2049.

12 123. Defendants' conduct also violated the Lanham Act, creating actual
13 confusion or a likelihood of it in the relevant marketplaces, about BR2049
14 branding, including Alcon's marketing efforts with potential auto brand partners
15 on the *Blade Runner 2099* television series, among other marketplace confusion
16 and brand damage.

17 124. Among other points creating likelihood of confusion, the Exhibit C
18 image is explicitly misleading as to whether there is any brand association
19 between Alcon or BR2049 and Musk or Tesla. The Exhibit C image is itself very
20 similar to images which Alcon uses for marketing and publicity purposes,
21 including as trade dress, and in creating Exhibit C, Musk and Tesla affixed a Tesla
22 logo in the lower right corner. In a real sense, Musk and Tesla put Alcon's mark
23 or trade dress right next to (literally affixed together to) Tesla's. This is further
24 exacerbated by Musk using the phrase "Blade Runner" when talking about the
25 Exhibit C image, as Alcon does have an ownership interest in that word mark, and
26 it is understood in usage as referencing either the 1982 Picture or BR2049.

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***Defendants Make No Remedial Efforts Between the Event and Alcon Filing Suit
and WBDI Effectively Encourages Musk and Tesla Not To Do So***

125. On October 16, 2024, before filing suit, Alcon contacted WBDI's representative (Heath) by telephone to express Alcon's dissatisfaction and to request information about what happened to have things go so wrong, especially after the Alcon Event Directions to WBDI and Heath's indication to Alcon that WBDI would perform all of them. WBDI refused to provide any meaningful explanation and did not engage in any remedial conduct, not even an apology to Alcon or public denouncement of Musk and Tesla's conduct as violating Alcon's rights. WBDI's refusal to remediate encouraged and supported Musk and Tesla not to do so, and indeed all Defendants refused to do so.

THE 1982 PICTURE

126. Warner Bros. Pictures was the original distributor of the 1982 Picture and still holds distribution rights to it. Warner Bros. Pictures was not the production entity, legal author or ultimate copyright holder of the 1982 Picture. The 1982 Picture was registered with the Copyright Office on November 16, 1982 under registration number PA0000157612, with the original author and copyright claimant being a legal entity named The Blade Runner Partnership. The Blade Runner Partnership was not a Warner Bros. Pictures entity. The Blade Runner Partnership subsequently created and registered multiple versions or cuts of the 1982 Picture with the Copyright Office.

127. In or about 2011, Alcon acquired a broad set of rights in the 1982 Picture and underlying properties, including motion picture, television and other derivative work rights to the 1982 Picture and the original Philip K. Dick "Do Androids Dream of Electric Sheep?" novel, all from a successor entity to The Blade Runner Partnership.

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